

The Honorable James L. Robert

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

JESUS OCTAVIO RODRIGUEZ-PAYAN,

Defendant

NO. CR17-233JLR

GOVERNMENT'S SENTENCING  
MEMORANDUM

COMES NOW the United States of America, by and through Brian Moran, United States Attorney for the Western District of Washington, and Mike Lang and Nicholas Manheim, Assistant United States Attorneys for said District, and files this Sentencing Memorandum.

The United States respectfully requests that the Court sentence the defendant to the agreed-upon eleven years in prison, followed by five years of supervised release, and the mandatory \$100 special assessment.

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1           **I.       DISCUSSION**

2           This defendant is the twelfth and final conspirator to be sentenced in “Operation  
3       Heidra,” an investigation that began in November 2016 when the defendant hand-  
4       delivered \$83,000 in cash to a Drug Enforcement Administration (DEA) cooperating  
5       witness, and culminated in September 2017, when the DEA executed search warrants on  
6       more than a dozen locations, from Seattle to Spokane to Los Angeles. The defendant,  
7       who was in Mexico when those warrants were served, was arrested on February 1, 2019  
8       attempting to enter the United States from Mexico.

9           The Court is well-acquainted with the facts of this conspiracy, having presided  
10       over the sentencing of every other co-defendant in the related case of *United States v.*  
11       *Ruelas-Payan, et al.* (CR17-229). Accordingly, in this Memorandum, the government  
12       will attempt to be efficient with the court’s time, while still acknowledging the unique  
13       circumstances of this defendant.

14          In determining the appropriate sentence, among the factors for this Court to  
15       consider are the nature and circumstances of the offense charged, the history and  
16       characteristics of the defendant, and the need for the sentence to reflect the seriousness of  
17       the offense and afford adequate deterrence. 18 U.S.C. § 3553(a). These factors will be  
18       addressed below.

19           **A. The Guidelines Calculations.**

20          The government generally agrees with the calculations set forth by the Probation  
21       Department in its Pre-Sentence Investigation Report. However, the government believes  
22       the defendant was one of the local leaders of this enterprise (together with co-defendant  
23       Francisco Ruelas-Payan) and thus qualifies for a two level enhancement pursuant to  
24       USSG § 3B1.1. The government’s position is based upon proffers from other  
25       conspirators, and phone calls in which the defendant is either heard instructing others, or  
26       being referred to in a position of leadership. Some of these calls include: a recorded call  
27       on November 21, 2016 in which the defendant says he will send someone to deliver  
28       cocaine (the deliverer turned out to be Ruelas-Payan); a recorded call on 21 November

2017 in which Ruelas-Payan refers to the defendant as “the boss;” and a recorded call on 7 June 2017 in which the defendant instructs Ruelas-Payan to have co-defendant Ulloa-Sarmiento go to a bank to launder funds.

The defendant has no criminal history, yielding a Criminal History Category of I. Pursuant to the U.S. Sentencing Guidelines, the government calculates the defendant’s Offense Level and Guidelines range as follows:

**Count One (Conspiracy to Distribute Controlled Substances):**

Base Offense Level (USSG § 2D1.1): **32**

Maintenance of a drug premises (USSG § 2D1.1 (b)(12))

**+2**

Role in the offense (USSG § 3B1.1)

**+2**

**36**

**Count Two (Conspiracy to Commit Money Laundering):**

Pursuant to USSG § 2S1.1, this base offense level is calculated by taking the offense level for the underlying offense from which the laundered funds were derived, which is 36.

Base Offense Level (USSG § 2S1.1 and 2D1.1) **36**

Conviction under 18 U.S.C. § 1956 (USSG § 2S1.1 (b)(2)(B)):

**+2**

**38**

Pursuant to USSG § 3C1.1(c), in cases involving money laundering and an underlying offense from which the laundered funds were derived, the counts are grouped according to USSG § 3C1.2(c). (*See*, USSG § 2S1.1, Application Note 6). The count with the highest offense level is used to determine the offense level. USSG § 3D1.3. Here, the money laundering count produces the higher offense level. Therefore, the government has used it to determine the offense level for purposes of sentencing.

Offense level:

**38**

Acceptance of Responsibility (USSG § 3E1.1): **-3**

**Total Offense Level:**

**35**

**Guidelines Range: 168-210 months (14 – 17.5 years)**

### **B. The Defendant's History and Characteristics.**

The government does not dispute the defendant's biography as reported in the Pre-Sentence Report. This biography paints the picture of a young man (merely age 22) deserving of a sentence below the guidelines range as agreed to by the parties. The defendant has no criminal history, a young daughter, an apparently loving family, the brightness to enroll in college, apparent ambition, and good career prospects had he not turned to drug trafficking. This history supports a sentence reflecting a degree of mercy and compassion, as it is well below the US Guidelines range. However, the proposed sentence is also strict, as it will keep the defendant in prison throughout the decade of his twenties.

That said, some of these same traits (such as his mental acuity and ambition) may explain why this young man – merely age 19 at the peak of this conspiracy – was trusted enough by a Mexican drug trafficking organization to lead this conspiracy in Western Washington (with his co-conspirator and cousin, Francisco Ruelas-Payan). The defendant was clearly one of the trusted local leaders of this bustling drug enterprise, as reflected in numerous wiretap transcripts where the DEA heard him discussing prices and sales of heroin ("black girl"), methamphetamine ("water"), cocaine ("a little toy"), and fentanyl ("blues"). It must be acknowledged that the defendant's "characteristics," therefore, are of someone with no compunction about trafficking in deadly narcotics, with the attendant cunning and amorality such a life requires. The eleven year sentence takes these characteristics into account.

1           **C. The Nature and Circumstances of the Offense.**

2           The sentence recommendation also considers the nature and circumstances of the  
3 defendant's offense. This drug and money laundering scheme lasted for many months,  
4 extended up and down the I-5 corridor, into Mexico, and involved many kilograms of  
5 heroin, as well as cocaine, fentanyl, and methamphetamine. Aside from its geographic  
6 reach and variety of products, this conspiracy was unique in that it stood at the vanguard  
7 of the deadly fentanyl trade in this District. When DEA agents seized "blue pills" from  
8 the defendant's apartment in September 2017, the agents did not know what these pills  
9 were. They do now. The defendant and his compatriots were the advance team for one of  
10 the deadliest illicit drug epidemics to ever hit Western Washington. The serious nature of  
11 this enterprise cannot be overstated.

12           Fentanyl was not the only drug this enterprise poured into the community. Heroin  
13 was its stock in trade. During one wiretapped message (on 3 July 2017), co-conspirator  
14 Jason Taylor texted the defendant to tell him (about his heroin): "If I keep getting stuff  
15 this good from you, I'll have the whole city [of Spokane] buying from me in no time."  
16 Words to be proud of. Two weeks later, in August 2017, the conspiracy was rattled when  
17 police seized thirteen pounds of heroin as it was coming up from southern California. At  
18 the takedown in September 2017, agents seized more than six pounds of heroin. The list  
19 could go on, but the point is clear – the defendant and his co-conspirators were  
20 responsible for distributing significant quantities of deadly heroin and fentanyl into  
21 Washington State.

22           **D. The Need for Deterrence.**

23           The eleven year sentence is necessary to promote respect for the law, and to deter  
24 the defendant and other drug traffickers from continuing their deadly trade.

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### **E. The Need to Avoid Unwanted Sentencing Disparities**

The parties have attempted to fashion a recommendation that properly accounts for the defendant's sentence in relation to his co-defendants. The following chart reveals the hierarchy of these sentences:

<b>Defendant</b>	<b>Factors</b>	<b>Sentence</b>
Francisco Ruelas-Payan	Local leader with defendant; guns and heroin at arrest	180 months (15 years)
<b>Jesus Rodriguez Payan</b>	<b>Local leader; no criminal history, and no guns</b>	<b>132 months (11 years)</b>
Jung Min Kang	Everett drug re-seller; possessed guns; criminal history	120 months
Jason Taylor	Spokane area re-seller; possessed guns; criminal history	120 months
Jorge Mathus-Velasquez	Re-seller	60 months
Agustin Delgado-Ibarra	Money launderer	60 months
Felix Antonio Sarabia Pena	Re-seller	72 months
Jorge Ulloa Sarmiento	Money launderer for the conspiracy	46 months
Jario Matus-Villalobos	Bought from Ruelas-Payan	33 months

Jose de la Cruz Rodriguez	Arrested at takedown/limited involvement otherwise	28 months
Nelly Romero Romero	Lower level dealer	24 months
Maria DeLeon	Ruelas-Payan's girlfriend; limited role	DREAM Court graduate

The joint sentence recommendation, when placed in this hierarchy, appears to properly account for the defendant's role (the proposed sentence is higher than that of any other conspirator except for Mr. Ruelas-Payan), the fact that he did not possess firearms, and his lack of criminal history. Importantly, these latter two factors distinguish him from defendants Kang, Taylor, and Ruelas Payan.

For example, Jung Kang was a convicted felon who pleaded guilty to possessing multiple firearms. Agents recovered three firearms from Kang's residence (two semiautomatic pistols and a semiautomatic shotgun), as well as ammunition and magazines. Kang had seven criminal history points, including a prior Washington State felony drug conviction for Possession with Intent to Distribute.

Jason Taylor's ten year sentence resulted from similar circumstances. At arrest, Taylor possessed four guns, including an AR-15 assault rifle. He had thirteen criminal history points arising from multiple convictions in Tennessee, California, and Washington. His most recent conviction had been a felony drug offense in California for trafficking in heroin, cocaine, and fentanyl, for which he had received a suspended sentence and had absconded from supervision.

Francisco Ruelas-Payan received a fifteen year sentence – four years higher than the government is recommending for Mr. Rodriguez-Payan. However, Ruelas-Payan

1 possessed two handguns – a Taurus revolver and a .40 caliber semi-automatic pistol, as  
2 well as an AR-15 magazine. On intercepted wiretap calls, DEA agents heard Ruelas-  
3 Payan discussing shipping guns back to Mexico. As the government explained in its  
4 Sentencing Memorandum for Mr. Ruelas-Payan:

5           Equally important, Defendant made the decision to arm  
6           himself. He appears to have shipped guns back to Mexico,  
7           where they undoubtedly are used in the hyper-violent  
8           environment seen in that country due to the drug trade. The  
9           fact that a loaded magazine for an assault rifle – but not the  
10          rifle itself – was recovered should concern the Court. He also  
11          possessed other guns, including a large-caliber revolver, and  
12          was carrying a firearm when he was arrested. Gun possession  
13          by drug traffickers exposes others, including law  
14          enforcement, to potential violence, and is an aggravating  
15          factor.

16  
17 Placed in this context, the defendant, who has no criminal history, and possessed no  
18 firearms or ammunition, appears deserving of the more lenient eleven year sentence  
19 recommendation.

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2       **II. CONCLUSION**

3       In sum, the § 3553 factors justify the parties' agreed recommendation of eleven  
4 years confinement. This sentence acknowledges the defendant's unique characteristics,  
5 will achieve the ends of justice, and is no longer than necessary.

6       DATED this 28th day of February, 2020.

7                               Respectfully submitted,

8                               BRIAN MORAN

9                               United States Attorney

10                              s/Mike Lang

11                              MIKE LANG

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CERTIFICATE OF SERVICE

I hereby certify that on February 28, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the defendant(s).

/s/ John M. Price

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